

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4

5 MICHELLE POULOS, JESSYCA
6 TROKE, MELISSA SHEARER

7 Plaintiffs,

8 v.
9

10 CITY OF LOS ANGELES;
11 MARCELLA WINN; DOES 1-10
12 INCLUSIVE

13 Defendants.
14

Case No. CV-19-00496 MWF(AMFx)
Hon. Michael W. Fitzgerald, Ctrm 5A

**STIPULATED PROTECTIVE
ORDER¹**

15
16 1. STIPULATED PROTECTIVE ORDER

17 A. PURPOSES AND LIMITATIONS

18 This is a Section 1983 action which stems from arrest, prosecution and
19 wrongful conviction of Plaintiff Michelle Poulos from Spring of 2001 through
20 October 2017. Discovery in this action is likely to involve production of
21 confidential, proprietary or private information for which special protection from
22 public disclosure and from use for any purpose other than prosecuting this
23 litigation may be warranted. Accordingly, the parties hereby stipulate to and
24 petition the Court to enter the following Stipulated Protective Order. The parties
25 acknowledge that this Order does not confer blanket protections on all
26 disclosures or responses to discovery and that the protection it affords from
27

28 ¹ This Stipulated Protective Order is based substantially on the model protective
order provided under Magistrate Judge Alexander F. MacKinnon's Procedures.

1 public disclosure and use extends only to the limited information or items that are
2 entitled to confidential treatment under the applicable legal principles.

3 B. GOOD CAUSE STATEMENT

4 This action is likely to involve disclosure of police personnel
5 records, District Attorney files and other information for which special
6 protection from public disclosure and from use for any purpose other than
7 prosecution of this action may be warranted for portions of those records. Such
8 confidential materials and information consist of, among other things, prior police
9 misconduct complaints or other confidential information otherwise generally
10 unavailable to the public, or which may be privileged or otherwise protected from
11 disclosure under state or federal statutes, court rules, case decisions, or common
12 law. Accordingly, to expedite the flow of information, to facilitate the prompt
13 resolution of disputes over confidentiality of discovery materials, to adequately
14 protect information the parties are entitled to keep confidential, to ensure that the
15 parties are permitted reasonable necessary uses of such material in preparation
16 for and in the conduct of trial, to address their handling at the end of the litigation,
17 and serve the ends of justice, a protective order for such information is justified in
18 this matter. It is the intent of the parties that information will not be designated
19 as confidential for tactical reasons and that nothing be so designated without a
20 good faith belief that it has been maintained in a confidential, non-public manner,
21 and there is good cause why it should not be part of the public record of this case.

22
23 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

24 The parties further acknowledge, as set forth in Section 12.3, below, that this
25 Stipulated Protective Order does not entitle them to file confidential information
26 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
27 and the standards that will be applied when a party seeks permission from the court
28 to file material under seal.

1 There is a strong presumption that the public has a right of access to judicial
2 proceedings and records in civil cases. In connection with non-dispositive motions,
3 good cause must be shown to support a filing under seal. *See Kamakana v. City*
4 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
5 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
6 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
7 orders require good cause showing), and a specific showing of good cause or
8 compelling reasons with proper evidentiary support and legal justification, must be
9 made with respect to Protected Material that a party seeks to file under seal. The
10 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL
11 does not—without the submission of competent evidence by declaration,
12 establishing that the material sought to be filed under seal qualifies as confidential,
13 privileged, or otherwise protectable—constitute good cause.

14 Further, if a party requests sealing related to a dispositive motion or trial,
15 then compelling reasons, not only good cause, for the sealing must be shown, and
16 the relief sought shall be narrowly tailored to serve the specific interest to be
17 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
18 2010). For each item or type of information, document, or thing sought to be filed
19 or introduced under seal in connection with a dispositive motion or trial, the party
20 seeking protection must articulate compelling reasons, supported by specific facts
21 and legal justification, for the requested sealing order. Again, competent evidence
22 supporting the application to file documents under seal must be provided by
23 declaration.

24 Any document that is not confidential, privileged, or otherwise protectable in
25 its entirety will not be filed under seal if the confidential portions can be redacted.
26 If documents can be redacted, then a redacted version for public viewing, omitting
27 only the confidential, privileged, or otherwise protectable portions of the document,
28 shall be filed. Any application that seeks to file documents under seal in their

entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: this pending federal lawsuit.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a

1 party to this Action but are retained to represent or advise a party to this Action and
2 have appeared in this Action on behalf of that party or are affiliated with a law firm
3 that has appeared on behalf of that party, and includes support staff.

4 2.11 Party: any party to this Action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this Action.

9 2.13 Professional Vendors: persons or entities that provide litigation
10 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material, or portion
14 thereof, that is properly designated as "CONFIDENTIAL."

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied or
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or
22 compilations of Protected Material; and (3) any testimony, conversations, or
23 presentations by Parties or their Counsel that might reveal Protected Material.

24 Any use of Protected Material at trial shall be governed by the orders of the
25 trial judge. This Order does not govern the use of Protected Material at trial.

26 27 4. DURATION

28 Once a case proceeds to trial, information that was designated as

1 CONFIDENTIAL or maintained pursuant to this protective order used or
2 introduced as an exhibit at trial becomes public and will be presumptively available
3 to all members of the public, including the press, unless compelling reasons
4 supported by specific factual findings to proceed otherwise are made to the trial
5 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
6 “good cause” showing for sealing documents produced in discovery from
7 “compelling reasons” standard when merits-related documents are part of court
8 record). Accordingly, the terms of this protective order do not extend beyond the
9 commencement of the trial.

10 11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. The Designating Party must designate for
16 protection only those parts of material, documents, items or oral or written
17 communications that qualify so that other portions of the material, documents,
18 items or communications for which protection is not warranted are not swept
19 unjustifiably within the ambit of this Order.

20 Mass, indiscriminate or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified or that have been made for an improper
22 purpose (e.g., to unnecessarily encumber the case development process or to
23 impose unnecessary expenses and burdens on other parties) may expose the
24 Designating Party to sanctions.

25 If it comes to a Designating Party’s attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

28 5.2 Manner and Timing of Designations. Except as otherwise provided in

1 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
2 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
3 under this Order must be clearly so designated before the material is disclosed or
4 produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
10 contains protected material. If only a portion of the material on a page qualifies for
11 protection, the Producing Party also must clearly identify the protected portion(s)
12 (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and
16 before the designation, all of the material made available for inspection shall be
17 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
18 documents it wants copied and produced, the Producing Party must determine
19 which documents, or portions thereof, qualify for protection under this Order.
20 Then, before producing the specified documents, the Producing Party must affix the
21 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
22 portion of the material on a page qualifies for protection, the Producing Party also
23 must clearly identify the protected portion(s) (e.g., by making appropriate markings
24 in the margins).

25 (b) for testimony given in depositions that the Designating Party
26 identifies the Disclosure or Discovery Material on the record, before the close of
27 the deposition all protected testimony.

28 (c) for information produced in some form other than documentary and

1 for any other tangible items, that the Producing Party affix in a prominent place on
2 the exterior of the container or containers in which the information is stored the
3 legend “CONFIDENTIAL.” If only a portion or portions of the information
4 warrants protection, the Producing Party, to the extent practicable, shall identify the
5 protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the Designating Party’s right to secure protection under this Order for such
9 material. Upon timely correction of a designation, the Receiving Party must make
10 reasonable efforts to assure that the material is treated in accordance with the
11 provisions of this Order.

12 13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order. The Challenging Party must serve written objection with
17 grounds for the objection on the Designating Party, including all assigned attorneys
18 and their assistants, via PDF and facsimile.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37-1 et seq. The Designating Party will have
21 10 Court days following receipt of written objections to explain in writing the
22 reasons for the designation. If the Designating Party fails to respond to the written
23 objection within the allotted time, the designation is deemed withdrawn for any
24 document or other material identified in the written objection.

25 6.3 Joint Stipulation. If the Designating Party persists in designating the
26 document or other material in question as Confidential, the objecting party may
27 move the Court for an order removing or replacing the “Confidential” designation.
28 Any challenge submitted to the Court shall be via a joint stipulation pursuant to

1 Local Rule 37-2.

2 6.4 Burden of Persuasion. The burden of persuasion in any such challenge
3 proceeding shall be on the Designating Party. Frivolous challenges, and those made
4 for an improper purpose (e.g., to harass or impose unnecessary expenses and
5 burdens on other parties) may expose the Challenging Party to sanctions. Unless the
6 Designating Party has waived or withdrawn the confidentiality designation, all
7 parties shall continue to afford the material in question the level of protection to
8 which it is entitled under the Producing Party's designation until the Court rules on
9 the challenge.

10
11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 Action only for prosecuting, defending or attempting to settle this Action. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the Action has been terminated, a
17 Receiving Party must comply with the provisions of section 13 below (FINAL
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this Action, as
27 well as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this Action;

1 (b) the House Counsel of the Receiving Party to whom disclosure is
2 reasonably necessary for this Action;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and Professional
9 Vendors to whom disclosure is reasonably necessary for this Action and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (g) the author or recipient of a document containing the information or
12 a custodian or other person who otherwise possessed or knew the information;

13 (h) during their depositions, witnesses, and attorneys for witnesses, in
14 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
15 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
16 they will not be permitted to keep any confidential information unless they sign the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
18 agreed by the Designating Party or ordered by the court. Pages of transcribed
19 deposition testimony or exhibits to depositions that reveal Protected Material may
20 be separately bound by the court reporter and may not be disclosed to anyone
21 except as permitted under this Stipulated Protective Order; and

22 (i) any mediator or settlement officer, and their supporting personnel,
23 mutually agreed upon by any of the parties engaged in settlement discussions.

24
25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
26 IN OTHER LITIGATION

27 If a Party is served with a subpoena or a court order issued in other litigation
28 that compels disclosure of any information or items designated in this Action as

1 “CONFIDENTIAL,” that Party must:

2 (a) promptly notify in writing the Designating Party. Such
3 notification shall include a copy of the subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or
5 order to issue in the other litigation that some or all of the material covered by the
6 subpoena or order is subject to this Protective Order. Such notification shall include
7 a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be
9 pursued by the Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served with
11 the subpoena or court order shall not produce any information designated in this
12 action as “CONFIDENTIAL” before a determination by the court from which the
13 subpoena or order issued, unless the Party has obtained the Designating Party’s
14 permission. The Designating Party shall bear the burden and expense of seeking
15 protection in that court of its confidential material and nothing in these provisions
16 should be construed as authorizing or encouraging a Receiving Party in this Action
17 to disobey a lawful directive from another court.

18
19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
20 PRODUCED IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a Non-
22 Party in this Action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the
24 remedies and relief provided by this Order. Nothing in these provisions should be
25 construed as prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party’s confidential information in its possession, and the Party is
28 subject to an agreement with the Non-Party not to produce the Non-Party’s

confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or work
11 product protection, the parties may incorporate their agreement in the stipulated
12 protective order submitted to the court.

13
14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order, no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on
21 any ground to use in evidence of any of the material covered by this Protective
22 Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Local Civil Rule 79-5. Protected Material
25 may only be filed under seal pursuant to a court order authorizing the sealing of the
26 specific Protected Material at issue. If a Party's request to file Protected Material
27 under seal is denied by the court, then the Receiving Party may file the information
28 in the public record unless otherwise instructed by the court.

1 12.4 Notification to Third Parties. In the event any Party seeks to file
2 Protected Material that was produced by a Non-Party pursuant to this Protective
3 Order, either before trial or for use during trial, that Party shall provide no less than
4 5 days' notice to the producing Non-Party, to permit the Non-Party to seek a
5 Protective Order or other appropriate relief.

6
7 13. FINAL DISPOSITION

8 After the final disposition of this Action, as defined in paragraph 4,
9 within 60 days of a written request by the Designating Party, each Receiving
10 Party must return all Protected Material to the Producing Party or destroy
11 such material. As used in this subdivision, "all Protected Material" includes all
12 copies, abstracts, compilations, summaries, and any other format reproducing
13 or capturing any of the Protected Material. Whether the Protected Material is
14 returned or destroyed, the Receiving Party must submit a written certification
15 to the Producing Party (and, if not the same person or entity, to the
16 Designating Party) by the 60 day deadline that (1) identifies (by category,
17 where appropriate) all the Protected Material that was returned or destroyed
18 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
19 compilations, summaries or any other format reproducing or capturing any of
20 the Protected Material. Notwithstanding this provision, Counsel are entitled to
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and
22 hearing transcripts, legal memoranda, correspondence, deposition and trial
23 exhibits, expert reports, attorney work product, and consultant and expert
24 work product, even if such materials contain Protected Material. Any such
25 archival copies that contain or constitute Protected Material remain subject to
26 this Protective Order as set forth in Section 4 (DURATION).

27
28 14. VIOLATION

1 Any violation of this Order may be punished by appropriate measures
2 including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4
5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 DATED: March 11, 2020

8 /S/ Deirdre O'Connor

9 _____
10 Deirdre O'Connor
11 Attorney for Plaintiffs

12 DATED: March 11, 2020

13 /S/ Surekha Shepherd

14 _____
15 Surekha Shepherd
16 Attorney for Defendants

17 DATED: March 11, 2020

18 /S/ James Jardin

19 _____
20 James Jardin, Esq.
21 Attorney for Third Party,
22 COUNTY OF LOS ANGELES

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: 3/11/2020

25 

26 _____
27 ALEXANDER F. MacKINNON
28 United States Magistrate Judge